

By: Robert R. Prende

H.B. No. 3339

A BILL TO BE ENTITLED

AN ACT

relating to powers and duties of the Edwards Aquifer Authority to manage the Edwards Aquifer including groundwater withdrawals, permitting, demand management and transfers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.03, Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993 and Chapter 966, Acts of the 77<sup>th</sup> Legislature, Regular Session, 2001, is amended by adding Subsection (28) to read as follows:

(28) "Water supply facility" means a dam, reservoir, treatment facility, transmission facility, or recharge project.

SECTION 2. Section 1.11(f), Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993 and Chapter 966, Acts of the 77<sup>th</sup> Legislature, Regular Session, 2001, is amended to read as follows:

(f) The authority may contract with a person who uses water from the aquifer for the authority or that person to own, finance, design, construct, operate, or ~~[own, finance, and]~~ maintain water supply facilities. ~~[Management fees or special fees may not be used for purchasing or operating these facilities. For the purpose of this subsection, "water supply facility" includes a dam, reservoir, treatment facility, transmission facility, or recharge project.]~~

SECTION 3. Section 1.14(b)-(h), Chapter 626, Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, is amended to read as follows:

1 (b) Except as provided by Subsections (c) [~~(d)~~], (e) [~~(f)~~],  
2 and (g) [~~(h)~~] of this section and Section 1.26 of this article,  
3 beginning January 1, 2005 [~~for the period ending December 31,~~  
4 ~~2007~~], the amount of permitted withdrawals from the aquifer may not  
5 exceed 550,000 [~~450,000~~] acre-feet of water for each calendar year.

6 [~~(c) Except as provided by Subsections (d), (f), and (h) of~~  
7 ~~this section and Section 1.26 of this article, for the period~~  
8 ~~beginning January 1, 2008, the amount of permitted withdrawals from~~  
9 ~~the aquifer may not exceed 400,000 acre-feet of water for each~~  
10 ~~calendar year.~~]

11 (c) [~~(d)~~] If, through studies and implementation of water  
12 management strategies, including conservation, springflow  
13 augmentation, diversions downstream of the springs, reuse, supple-  
14 mental recharge, conjunctive management of surface and subsurface  
15 water, and drought management plans, programs, practices,  
16 procedures, or methods, of any kind, the authority determines that  
17 the amount of water available for permitting under Subsection (b)  
18 of this section should be changed to more effectively accomplish  
19 the purposes of this article [~~additional supplies are available~~  
20 ~~from the aquifer~~], the authority, in consultation with appropriate  
21 state and federal agencies, shall [~~may~~] review and, by order,  
22 change the amount of water available for permitting under  
23 Subsection (b) of this section [~~may increase the maximum amount of~~  
24 ~~withdrawals provided by this section and set a different maximum~~  
25 ~~amount of withdrawals~~]. Beginning September 1, 2006, and every four  
26 years thereafter, the Authority shall determine whether the amount  
27 of water available for permitting under Subsection (b) of this

1 section should be changed pursuant to this subsection. If the  
2 requirements of Subsection (a) have not all been met, the authority  
3 shall by March 1 of the succeeding year implement new requirements  
4 to assure compliance with Subsection (a).

5 (d) [~~(e)~~] Unless made pursuant to the transfer of a regular,  
6 term, emergency, monitoring, or recharge recovery permit, the  
7 transfer of interim authorization, or an exempt well, the [The]  
8 authority may not allow withdrawals from the aquifer through wells  
9 drilled after June 1, 1993 [~~, except additional water as provided~~  
10 by Subsection (d) and then on an interruptible basis].

11 (e) [~~(f)~~] If the level of the aquifer is equal to or greater  
12 than 650 feet above mean sea level as measured at Well J-17, the  
13 authority shall [may] authorize withdrawals pursuant to initial  
14 regular permits [withdrawals] from the San Antonio pool, on an  
15 uninterruptible basis [~~, of permitted amounts]~~. If the level of  
16 the aquifer is equal to or greater than 845 feet at Well J-27, the  
17 authority shall [may] authorize withdrawals pursuant to initial  
18 regular permits [withdrawals] from the Uvalde pool, on an  
19 uninterruptible basis [~~, of permitted amounts]~~. If the level of the  
20 aquifer is less than 650 feet above mean sea level as measured at  
21 Well J-17, the authority may, pursuant to Section 1.26 of this  
22 article, interrupt withdrawals pursuant to initial regular permits  
23 from the San Antonio pool. If the level of the aquifer is less than  
24 845 feet at Well J-27, the authority may, pursuant to Section 1.26  
25 of this article, interrupt withdrawals pursuant to initial regular  
26 permits from the Uvalde pool. Pursuant to Section 1.26 of this  
27 article, the [The] authority shall require interruptions in [limit

1 ~~the additional]~~ withdrawals, or require implementation of programs,  
2 practices, procedures, or methods, pursuant to Subsection (g) of  
3 this section, to protect ~~[to ensure that]~~ springflows at the Comal  
4 Springs and San Marcos Springs ~~[are not affected]~~ during demand  
5 management and critical period management ~~[drought]~~ conditions.

6 (f) ~~[(g)]~~ The authority by rule may define other pools within  
7 the aquifer, in accordance with hydrogeologic research, and may  
8 establish index wells for any pool to monitor the level of the  
9 aquifer to aid the regulation of withdrawals from the pools.

10 (g) ~~[(h)]~~ By ~~[To accomplish the purposes of this article, by]~~  
11 June 1, 2005 ~~[1994]~~, the authority ~~[, through a program,]~~ shall  
12 implement and enforce water management programs, practices,  
13 procedures, or ~~[and]~~ methods to ensure that, not later than  
14 December 31, 2012, the continuous minimum springflows of the Comal  
15 Springs and the San Marcos Springs are maintained to protect  
16 endangered and threatened species to the extent required by federal  
17 law. The authority from time to time as appropriate may revise the  
18 programs, practices, procedures, or ~~[and]~~ methods. To meet this  
19 requirement, the authority shall require:

20 (1) pursuant to Section 1.26 of this article, phased  
21 reductions in the amount of water that may be used or withdrawn by  
22 existing users or categories of other users; or

23 (2) implementation of alternative management programs,  
24 practices, procedures, or ~~[and]~~ methods.

25 SECTION 4. Section 1.16(e)-(h), Chapter 626, Acts of the  
26 73<sup>rd</sup> Legislature, Regular Session, 1993, is amended to read as  
27 follows:

1 (e) To the extent water is available for permitting, the  
2 board shall issue an ~~[the]~~ existing user a regular permit for  
3 withdrawal of an amount of water equal to the user's maximum  
4 beneficial use of water without waste during any one calendar year  
5 of the historical period. If an existing ~~[a water]~~ user does not  
6 have historical use for a full year, then the authority shall set  
7 the user's maximum beneficial use of water without waste as the  
8 ~~[issue a permit for withdrawal based on an]~~ amount of water that  
9 would normally be beneficially used without waste for the intended  
10 purpose for a calendar year.

11 (f) If the total amount of water determined to have been  
12 beneficially used without waste under Subsection (e) of this  
13 section ~~[this subsection]~~ exceeds the amount of water available for  
14 permitting under Subsection (b) of Section 1.14 of this article,  
15 the authority shall proportionately adjust the amount of water  
16 authorized for withdrawal under regular ~~[the]~~ permits  
17 ~~[proportionately]~~ to meet the amount available for permitting.  
18 Except as provided by Subsection (b) of Section 1.21 of this  
19 article, no existing user may be proportionately adjusted below the  
20 following amounts:

21 (1) for an ~~[An]~~ existing irrigation user, ~~[shall receive~~  
22 ~~a permit for not less than]~~ two acre-feet a year for each acre of  
23 land the user actually irrigated in any one calendar year during  
24 the historical period; or ~~[=]~~

25 (2) for an ~~[An]~~ existing user who has operated a well  
26 for three or more years during the historical period, ~~[shall~~  
27 ~~receive a permit for at least]~~ the average amount of water

1 withdrawn annually during the historical period.

2 (g) Except as provided by Subsection (b) of Section 1.21 of  
3 this article, in the event a proportional adjustment results in an  
4 amount of water authorized for withdrawal under a regular permit  
5 that is less than an applicable minimum regular permit amount  
6 specified in Subsection (f) of this section, then the Authority  
7 shall restore the amount to be equal to the minimum regular permit  
8 amount.

9 (h) [-(f)] The board by rule shall consider the equitable  
10 treatment of a person whose historic use has been affected by a  
11 requirement of or participation in a federal program.

12 (i) [-(g)] The authority shall issue an initial regular permit  
13 without a term, and an initial regular permit remains in effect  
14 until the permit is abandoned, cancelled, or retired.

15 (j) [-(h)] The board shall notify each permit holder that the  
16 permit is subject to limitations as provided by this article.

17 SECTION 5. Section 1.21, Chapter 626, Acts of the 73<sup>rd</sup>  
18 Legislature, Regular Session, 1993, is amended to read as follows:

19 SECTION 1.21 ~~[PERMIT]~~ RETIREMENT OF PERMITS OR APPLICATIONS.

20 (a) The authority shall prepare and implement a plan for reducing,  
21 by January 1, 2005 ~~[2000]~~, the maximum annual volume of water  
22 authorized to be withdrawn from the aquifer under regular permits  
23 to 550,000 ~~[400,000]~~ acre-feet a year or the adjusted amount  
24 determined under Subsection (c) ~~[(d)]~~ of Section 1.14 of this  
25 article. The plan must be enforceable and must include measures to  
26 retire all or part of regular permits or applications for initial  
27 regular permits, or other water management measures designed to

1 achieve the required reductions.

2 ~~[(b) The plan must be enforceable and must include water~~  
3 ~~conservation and reuse measures, measures to retire water rights,~~  
4 ~~and other water management measures designed to achieve the~~  
5 ~~reduction levels or appropriate management of the resource.]~~

6 (b) [(c)] If, on or after January 1, 2005 ~~[2008]~~, the overall  
7 volume of water authorized to be withdrawn from the aquifer under  
8 regular permits is greater than 550,000 ~~[400,000]~~ acre-feet a year  
9 or greater than the adjusted amount determined under Subsection (c)  
10 ~~[(d)]~~ of Section 1.14 of this article, the Authority shall  
11 immediately proportionately adjust the maximum authorized  
12 withdrawal amount of each regular permit as determined under  
13 Subsection (e) of Section 1.16 of this article ~~[shall be~~  
14 ~~immediately reduced by an equal percentage]~~ as is necessary to  
15 reduce aggregate ~~[overall]~~ maximum authorized withdrawals under  
16 regular permits ~~[demand]~~ to 550,000 ~~[400,000]~~ acre-feet a year or  
17 the adjusted amount, as appropriate. In the event a proportional  
18 adjustment results in an amount of water authorized for withdrawal  
19 under a regular permit that is less than an applicable minimum  
20 regular permit amount specified in Subsection (f) of Section 1.16  
21 of this article, then the Authority shall, in accordance with  
22 Section 1.29 of this article, compensate the permittee for the  
23 amount of the authorized withdrawal below the minimum regular  
24 permit amount that was proportionately adjusted in order to meet  
25 550,000 acre-feet a year, or as that amount may be adjusted under  
26 Subsection (c) of Section 1.14 of this article. The amount reduced  
27 may be restored, in whole or in part, as other appropriate measures

1 are implemented that maintain overall demand at or below the  
2 appropriate amount.

3 SECTION 6. Section 1.26, Chapter 626, Acts of the 73<sup>rd</sup>  
4 Legislature, Regular Session, 1993, is amended to read as follows:

5 SECTION 1.26 DEMAND MANAGEMENT AND CRITICAL PERIOD MANAGEMENT  
6 PLAN. (a) The authority shall prepare and coordinate implementation  
7 of a plan for demand management and critical period management [~~on~~  
8 ~~or before September 1, 1995~~]. The mechanisms must:

9 (1) distinguish between discretionary use and  
10 nondiscretionary use;

11 (2) require reductions of all discretionary use to the  
12 maximum extent feasible;

13 (3) require utility pricing, to the maximum extent  
14 feasible, to limit discretionary use by the customers of water  
15 utilities; and

16 (4) require reduction of nondiscretionary use by  
17 permitted or contractual users, to the extent further reductions  
18 are necessary, in the reverse order of the following water use  
19 preferences:

20 (A) municipal, domestic, and livestock;

21 (B) industrial and crop irrigation;

22 (C) residential landscape irrigation;

23 (D) recreational and pleasure; and

24 (E) other uses that are authorized by law.

25 (b) The board shall adopt measures to ensure that authorized  
26 withdrawals from non-exempt wells are reduced to 350,000 acre-feet,  
27 annualized, if the following conditions are met:



1           (1) for the San Antonio Pool, the level of the aquifer  
2 is less than 627 feet above mean sea level as measured at Well J-  
3 17; or

4           (2) for the Uvalde Pool, the level of the aquifer is  
5 less than 842 feet above mean sea level as measured at Well J-27.

6           (c) The demand management and critical period plan required  
7 to be prepared and implemented by this section shall be adopted by  
8 the board no later than September 1, 2004. In the event this  
9 deadline is not met, irrespective of whether a demand management or  
10 critical period is in effect, the board shall issue an order  
11 temporarily interrupting 20 percent of the amount of water  
12 authorized for withdrawal under each regular permit until the board  
13 has adopted the plan.

14           SECTION 7.       Section 1.29(a) and (c)-(i), Chapter 626, Acts  
15 of the 73<sup>rd</sup> Legislature, Regular Session, 1993 and Chapter 966, Acts  
16 of the 77<sup>th</sup> Legislature, Regular Session, 2001, is amended to read  
17 as follows:

18           (a) The cost of [~~reducing withdrawals or~~] permit or  
19 application retirements under Section 1.21 of this article or the  
20 adjusted amount under Subsection (c) of Section 1.14 of this  
21 article for the period ending December 31, 2004, must be borne  
22 solely by users of the aquifer and shall be paid for by aquifer  
23 management fees assessed under Subsections (b) and (c) of this  
24 section. [÷]

25           [~~(1) solely by users of the aquifer for reducing~~  
26 ~~withdrawals from the level on the effective date of this article to~~  
27 ~~450,000 acre-feet a year, or the adjusted amount determined under~~

1 ~~Subsection (d) of Section 1.14 of this article for the period~~  
2 ~~ending December 31, 2007, and~~

3 ~~(2) equally by aquifer users and downstream water rights~~  
4 ~~holders for permit retirements from 450,000 acre-feet a year, or~~  
5 ~~the adjusted amount determined under Subsection (d) of Section 1.14~~  
6 ~~of this article for the period ending December 31, 2007, to 400,000~~  
7 ~~acre-feet a year, or the adjusted amount determined under~~  
8 ~~Subsection (d) of Section 1.14 of this article, for the period~~  
9 ~~beginning January 1, 2008.]~~

10 (b) The authority shall assess equitable aquifer management  
11 fees based on aquifer use under the water management plan to  
12 finance its administrative expenses and programs authorized under  
13 this article. Aquifer management fees may additionally be used for  
14 the repayment of revenue bonds issued by the authority pursuant to  
15 Section 1.28 of this article. Each water district governed by  
16 Chapter 52, Water Code, that is within the authority's boundaries  
17 may contract with the authority to pay expenses of the authority  
18 through taxes in lieu of user fees to be paid by water users in the  
19 district. The contract must provide that the district will pay an  
20 amount equal to the amount that the water users in the district  
21 would have paid through user fees. The authority may not collect  
22 a total amount of fees and taxes that is more than is reasonably  
23 necessary for the administration of the authority.

24 ~~[(c) The authority shall also assess an equitable special fee~~  
25 ~~based on permitted aquifer water rights to be used only to finance~~  
26 ~~the retirement of rights necessary to meet the goals provided by~~  
27 ~~Section 1.21 of this article. The authority shall set the~~

1 ~~equitable special fees on permitted aquifer users at a level~~  
2 ~~sufficient to match the funds raised from the assessment of~~  
3 ~~equitable special fees on downstream water rights holders.~~

4 ~~(d) The commission shall assess equitable special fees on all~~  
5 ~~downstream water rights holders in the Guadalupe River Basin to be~~  
6 ~~used solely to finance the retirement of aquifer rights necessary~~  
7 ~~to meet the goals provided by Section 1.21 of this article. Fees~~  
8 ~~assessed under this subsection may not exceed one-half of the cost~~  
9 ~~of permit retirements from 450,000 acre-feet a year, or the~~  
10 ~~adjusted amount determined under Subsection (d) of Section 1.14 of~~  
11 ~~this article, for the period ending December 31, 2007, to 400,000~~  
12 ~~acre-feet a year for the period beginning January 1, 2008. The~~  
13 ~~authority shall report to the commission the estimated costs of the~~  
14 ~~retirements. The amount of fees assessed under this subsection~~  
15 ~~shall be determined in accordance with rules adopted by the~~  
16 ~~commission for fees under the South Texas watermaster program with~~  
17 ~~adjustments as necessary to ensure that fees are equitable between~~  
18 ~~users, including priority and nonpriority hydroelectric users. A~~  
19 ~~downstream water rights holder shall pay fees assessed under this~~  
20 ~~subsection to the authority. A fee may not be assessed by the~~  
21 ~~commission under this subsection on contractual deliveries of water~~  
22 ~~stored in Canyon Lake that may be diverted downstream of the San~~  
23 ~~Marcos Springs or Canyon Dam. A person or entity making a~~  
24 ~~contractual sale of water stored upstream of Canyon Dam may not~~  
25 ~~establish a systemwide rate that requires purchasers of upstream~~  
26 ~~stored water to pay the special fee assessed under this~~  
27 ~~subsection.]~~

1        (c) [~~(e)~~] In developing an equitable fee structure under this  
2 section, the authority may establish different fee rates on a per  
3 acre-foot basis for different types of use. The fees must be  
4 equitable between types of uses. The fee rate for agricultural use  
5 shall be based on the volume of water withdrawn and may not be more  
6 than \$2 per acre-foot. The authority shall assess the fees on the  
7 amount of water a permit holder is authorized to withdraw under the  
8 permit.

9        (d) [~~(f)~~] The authority shall impose a permit application fee  
10 not to exceed \$25.

11        (e) [~~(g)~~] The authority may impose a registration application  
12 fee not to exceed \$10.

13        [~~(h) Special fees collected under Subsection (c) or (d) of~~  
14 ~~this section may not be used to finance a surface water supply~~  
15 ~~reservoir project.]~~

16        (f) [~~(i)~~] The authority shall provide money as necessary, but  
17 not to exceed five percent of the money collected under Subsection  
18 (b) [~~(d)~~] of this section, to finance the South Central Texas Water  
19 Advisory Committee's administrative expenses and programs  
20 authorized under this article.

21        SECTION 8.        Sections 1.34(a), (b) and (c), Chapter 626,  
22 Acts of the 73<sup>rd</sup> Legislature, Regular Session, 1993, are amended to  
23 read as follows:

24        (a) Water withdrawn from the aquifer may only [~~must~~] be used  
25 within the boundaries of:

26                (1) the authority; or

27                (2) the geographic area subject to a Certificate of

1 Convenience and Necessity ("CCN") that extends within and beyond  
2 the boundaries of the authority, provided that the majority of the  
3 CCN lies within the boundaries of the authority and the CCN is held  
4 by an original regular permit holder or a wholesale customer  
5 thereof.

6 (b) The authority by rule shall ~~[may]~~ establish a procedure  
7 by which a person who has achieved ~~[installs]~~ water conservation  
8 ~~[equipment]~~ may transfer ~~[sell]~~ the ~~[water]~~ conserved water.

9 (c) A permit holder may transfer a regular ~~[lease]~~ permit,  
10 ~~[permitted water rights, but a holder of a permit for irrigation~~  
11 ~~use may not lease more than 50 percent of the irrigation rights~~  
12 ~~initially permitted. The user's remaining irrigation water rights~~  
13 ~~must be used in accordance with the original permit and must pass~~  
14 ~~with transfer of the irrigated land.]~~ however, with respect to a  
15 regular permit originally issued for irrigation use, up to 50  
16 percent of such a permit may be transferred without restrictions as  
17 to the place or purpose of use, while the remaining 50 percent may  
18 only be transferred:

19 (1) to another place of use within the county in which  
20 the place of use under the original permit is located, for  
21 irrigation use;

22 (2) to another place of use within the county in which  
23 the place of use under the original permit is located, for any  
24 purpose of use, but only in the event that all or a portion of the  
25 place of use under the original permit is developed such that it is  
26 no longer capable of being used for irrigation, and only for that  
27 portion of the permit attributable to the non-irrigable land; or

1           (3) in a manner consistent with rules adopted by the  
2 authority for the transfer of conserved water pursuant to  
3 Subsection (b) of this section.

4           SECTION 9.       Section 1.45, Chapter 626, Acts of the 73<sup>rd</sup>  
5 Legislature, Regular Session, 1993, is amended to read as follows:

6           (a) The authority may own, finance, design, construct,  
7 [build or] operate, and maintain recharge dams, and associated  
8 facilities, structures, or works, in the contributing or recharge  
9 area of the aquifer if the recharge is made to increase the yield  
10 of the aquifer and the recharge project does not impair senior  
11 water rights or vested riparian rights.

12          SECTION 10.     EFFECTIVE DATE.     This Act takes effect  
13 immediately if it receives a vote of two-thirds of all the members  
14 elected to each house, as provided by Section 39, Article III,  
15 Texas Constitution.    If this Act does not receive the vote  
16 necessary for immediate effect, this Act takes effect September 1,  
17 2003.

H.B. No.

3339

By

Robert R. Prentice

A BILL TO BE ENTITLED  
AN ACT

relating to powers and duties of the Edwards Aquifer Authority to manage the Edwards Aquifer including groundwater withdrawals, permitting, demand management and transfers.

MAR 14 2003

Filed with the Chief Clerk

APR 01 2003

Read first time and referred to Committee on Natural Resources

Reported favorably (as amended)  
(as substituted)

Sent to Committee on (Calendars)  
(Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)  
(record vote of years, nays, present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)  
by a vote of years, nays, present, not voting

Read third time (amended); finally passed (failed to pass) by a (non-record vote)  
(record vote of years, nays, present, not voting)

Engrossed

Sent to Senate

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

Received from the House

Read and referred to Committee on

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)  
(years, nays)

Read second time, and passed to third reading by (unanimous consent)  
(a viva voce vote)  
(years, nays)

Senate and Constitutional 3 Day Rules suspended by a vote of years, nays

Read third time, and passed by (a viva voce vote)  
(years, nays)

Returned to the House

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

\_\_\_\_\_ Returned from the Senate (as substituted)  
(with amendments)

\_\_\_\_\_ House concurred in Senate amendments by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

\_\_\_\_\_ House refused to concur in Senate amendments and requested the appointment of a conference committee  
by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

\_\_\_\_\_ House conferees appointed: \_\_\_\_\_, Chair; \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ Senate granted House request. Senate conferees appointed: \_\_\_\_\_, Chair;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_ Conference committee report adopted (rejected) by the House by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

\_\_\_\_\_ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays)